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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/809,922
Filing Date: March 16, 2001
Appellant(s): THOMAS, WILLIAM L.

Michael J. Chasen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 19, 2007 appealing from the Office action mailed April 19, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6402614	Schneier et al.	6-2002
6277026	Archer	8-2001
GB 2147773	Dickinson et al.	5-1985
2002/0023010	Rittmaster	2-2002

6168521 Luciano et al. 01-2001

Lottobot, (Feb. 1999), pp. 1-22

SGI, Scientific Gaming International, Vol. 1, Issue no. 5 (Jan. 1999), pp. 1-4

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-6 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneier et al. (U.S. 6,402,614) in view of Archer (US 6,277,026).

3. Schneier et al discloses regarding claims 1 and 11, Schneier et al disclose determining the particular location of the user (col. 18, lines 1-7 and col. 18, line 55 to col. 19, line 25 and Figure 5 along with the related description thereof, wherein the HTV 20 includes GPS receiver 111 to communicate temporal and positional information), providing a listing of lotteries in which the user can participate on a visual display based on the particular location of the user (col. 20, lines 27-34 and Figure 5 along with the related description thereof, wherein the CMC 12 enables/disables certain lottery games based on the temporal and positional information communicated by the GPS receiver 111 of HTV 20), giving the user the ability to participate in at least one of the lotteries using the user equipment (col. 16, lines 22-37 and col. 20, lines 3-15, wherein the HTV 20 includes a touch

screen display 84 enabling a user to participate in certain lottery games enabled by the CMC 12 based on the temporal and positional information communicated by the GPS receiver 111 of HTV 20) as recited in claims 1 and 11.

Regarding claims 2 and 12, Schneier et al. disclose that the user equipment is configured to notify the user that results to at least one of the lotteries in which the user participated are available (col. 19, lines 54-64 and Figure 13 along with the related description thereof).

Regarding claims 3 and 13, Schneier et al. disclose that the notification is an instant message, a pager message or a telephone message (col. 10, lines 36-46, wherein a telephone network or an interactive communications network is used to facilitate game play in which the user is notified of lottery results, e.g., see col. 19, lines 54-64 and Figure 13 along with the related description thereof).

Regarding claims 4 and 14, Schneier et al. disclose that the user equipment is configured to display the results to at least one of the lotteries in which the user participated (col. 19, lines 54-64 and col. 20, lines 32-34, wherein display 84 of HTV 20 displays lottery results).

Regarding claims 5 and 15, Schneier et al. disclose that the user equipment is configured to indicate whether the user won for each of the lotteries for which results are displayed (col. 19, lines 54-64 and col. 20, lines 32-34, wherein display 84 of HTV 20 displays lottery results).

Regarding claims 6 and 16, Schneier et al. disclose that the user equipment is configured to record, in a multimedia format, the lottery drawings associated with the lotteries in which the user participated (col. 20, lines 40-56, wherein the messages containing lottery game outcomes, i.e., lottery drawings, contain text or graphics and can be orally communicated)

Schneier et al does not expressly disclose regarding claims 1 and 11, issuing an electronic lottery ticket for the at least one of the lotteries, wherein a lottery drawing for the at least one of the lotteries will take place at a later time.

Archer teaches regarding claims 1 and 11, issuing an electronic lottery ticket for the at least one of the lotteries, wherein a lottery drawing for the at least one of the lotteries will take place at a later time (Figures 4A-4D and 5A along with the related description thereof). It is inherently known in lottery that users may purchase lottery for different lottery drawings that may take place at a later time. Archer further teaches that when a user presents evidence of a winning lottery ticket number, the ticket number maybe from a previously generated web-site page containing a randomly generated and unique secure lottery ticket purchase code and some other personal information, which one can presume that the purchase of the lottery ticket was for a lottery that took place at a later time (col. 9, lines 56-65). By issuing lottery tickets for lottery drawings for a later time, one of ordinary skill in the art would provide known methods to yield to predictable results that allows a user to retrieve there results of a lottery ticket either online or an authorized payment center.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Schneier et al to include issuing an electronic lottery ticket for the at least one of the lotteries, wherein a lottery drawing for the at least one of the lotteries will take place at a later time as taught by Archer to provide known methods to yield to predictable results that allows a user to retrieve there results of a lottery ticket either online or an authorized payment center.

4. Claims 1 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al. (GB 2,147,773) and in view of Rittmaster (U.S. 2002/0023010) and Archer (US 6,277,026).

5. Dickinson et al discloses regarding claims 1 and 11, providing a listing of lotteries in which the user can participate on a visual display (Figures 1, 6-9B along with the related description thereof) and giving the user the ability to participate in at least one of the lotteries using the user equipment (Figures 1, 6-9B along with the related description thereof).

Dickinson et al. does not expressly disclose regarding claims 1 and 11, determining the particular location of the user and providing a listing of lotteries in which the user can participate on a visual display based on the particular location of the user and issuing an electronic lottery ticket for the at least one of the lotteries, wherein a lottery drawing for the at least one of the lotteries will take place at a later time and issuing an electronic lottery ticket for the at least one of the lotteries, wherein a lottery drawing for the at least one of the lotteries will take place at a later time.

Rittmaster et al. teaches regarding claims 1 and 11, limiting lotteries to geographic locations where such lotteries are legal (paragraphs [0006] and [0039]). Rittmaster et al. teach determining the particular location of the user (Figure 2 along with the related description thereof) and providing a listing of lotteries in which the user can participate on a visual display based on the particular location of the user (Figure 3 along with the related description thereof, wherein geographic information is used to allow or deny access to a product or service (i.e., the lottery listing of Dickinson). Rittmaster et al. teach that limiting lottery availability based on geographic information determined from players helps to ensure lottery legality in certain jurisdictions (paragraph [0006]). By modifying Dickinson's gaming terminals to include other various lottery games over the Internet and limiting lottery or game services available over the Internet based on geographic information determined from players would help to ensure lottery legality in certain jurisdictions (paragraph [0006]).

Archer teaches the regarding claims 1 and 11, issuing an electronic lottery ticket for the at least one of the lotteries, wherein a lottery drawing for the at least one of the lotteries will take place at a later time (Figures 4A-4D and 5A along with the related description thereof). It is inherently known in lottery that users may purchase lottery for different lottery drawings that may take place at a later time. Archer further teaches that when a user presents evidence of a winning lottery ticket

number, the ticket number maybe from a previously generated web-site page containing a randomly generated and unique secure lottery ticket purchase code and some other personal information, which one can presume that the purchase of the lottery ticket was for a lottery that took place at a later time (col. 9, lines 56-65). By issuing lottery tickets for lottery drawings for a later time, one of ordinary skill in the art would provide known methods to yield to predictable results that allows a user to retrieve there results of a lottery ticket either online or an authorized payment center.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Dickinson et al to include limit lottery availability based on geographic information determined from players and issuing electronic tickets for lotteries taking place at a later time as taught by Rittmaster et al and Archer to ensure lottery legality in certain jurisdictions as desirably and provide known methods to yield to predictable results that allows a user to retrieve there results of a lottery ticket either online or an authorized payment center.

Claims 2-5, 7, 9, 12-15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al. in view of Rittmaster et al. and Archer, as applied to claims 1 and 11 above, and further in view of LottoBot.

The combination of Dickinson et al. and Rittmaster et al. and Archer teaches a method and system as described above with respect to claims 1 and 11, respectively. However, the combination of Dickinson et al. and Rittmaster et al. and Archer does not explicitly teach various lottery functions recited in dependent claims 2-5, 7, 9, 12-15, 17 and 19. In a related lottery application, LottoBot teaches an analogous lottery system allowing users to access lottery data and play lottery games over the Internet through user equipment (pages 1 and 20-21). LottoBot further teaches that lottery results and winning numbers can be communicated to players as a convenience to the player (pages 20-21), which enables player's to check lottery results and winning numbers from their

personal computers. It would have been obvious for one skilled in the art at the time of the invention to incorporate the notification of lottery results and winning numbers of LottoBot into the combination of Dickinson et al. and Rittmaster et al. and Archer in order to increase player convenience by allowing players to check lottery results and winning numbers from their personal computers as desirably taught by LottoBot on pages 20-21.

Regarding claims 2 and 12, LottoBot teaches that users, after the lottery drawing are notified that their lottery results are available through e-mail or pager message (pages 1 and 5).

Regarding claims 3 and 13, LottoBot teaches that users are notified that their lottery results are available through pager message (page 1).

Regarding claims 4 and 14, LottoBot teaches displaying the results to at least one of the lotteries in which the user participated (page 1).

Regarding claims 5 and 15, LottoBot teaches indicating whether the user won for each of the lotteries in which the user participated (page 1).

Regarding claims 7 and 17, LottoBot teaches reminding a user of an upcoming lottery drawing, through jackpot alerts, with at least one of the lotteries in which the user participated (page 1).

Regarding claims 9 and 19, LottoBot teaches displaying a user interface to the user for use in creating a lottery wager, wherein the user interface is customized for each lottery (page 4).

6. Claims 6 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al. in view of Rittmaster et al. and Archer, as applied to claims 1 and 11 above, and further in view of Luciano et al. (U.S. Patent No. 6,168,521).

The combination of Dickinson et al. and Rittmaster et al. and Archer teaches a method and system as described above with respect to claims 1 and 11, respectively. In particular, the

combination of Dickinson et al. and Rittmaster et al. and Archer teaches lottery game availability based on geographic location, wherein users can play available lottery games. However, the combination of Dickinson et al. and Rittmaster et al. does not explicitly teach recording, in a multimedia format, the lottery drawings associated with the lotteries in which the user participated. In a related lottery application, Luciano et al. teach multiple player activated video terminals linked to computers (abstract). Each player places a wager and selects a particular lottery draw choices. The system enrolls the player in a future lottery game based on the choices. (Abstract). After drawing winning lottery numbers, the system displays the result of the selected game displayed at the player's terminal in a multimedia format (see Figure 9 along with the related description thereof), such that the player can activate a stored replay of the draw (Figure 6 along with the related description thereof). Luciano et al. teach that the video lottery system provides more excitement and entertainment than traditional lottery systems (col. 1, lines 22-27). It would have been obvious for one skilled in the art at the time of the invention to incorporate the recordation of lottery results in a multimedia format presented to players of the lottery as taught by Luciano et al. into the lottery method and system as taught by the combination of Dickinson et al., Rittmaster and Archer in order to increase player excitement and entertainment as desirably taught by Luciano et al. in col. 1, lines 22-27.

7. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al. in view of Rittmaster et al. and Archer, as applied to claims 1 and 11 above, and further in view of SGI Insights, Scientific Gaming International, vol. 1, issue no. 5 (hereafter "SGI Insights").

The combination of Dickinson et al. and Rittmaster et al. and Archer teaches a method and system as described above with respect to claims 1 and 11, respectively. In particular, the combination of Dickinson et al. and Rittmaster et al. and Archer teaches lottery game availability

based on geographic location, wherein users can play available lottery games. However, the combination of Dickinson et al. and Rittmaster et al. does not explicitly teach generating lottery gift certificates. In a related lottery application, SGI Insights teaches the generation of lottery gift certificates for play in a future lottery (page 4). SGI Insights teaches that lottery gift certificates increase player appeal as recipients can use the gift certificates at any time, e.g., when the jackpot gets bigger (page 4). It would have been obvious for one skilled in the art at the time of the invention to incorporate the generation of lottery gift certificates as taught by SGI Insights into the lottery method and system as taught by the combination of Dickinson et al., Rittmaster and Archer in order to increase player appeal to the lottery games provided thereby as desirably taught by SGI Insights on page 4.

8. Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al. in view of Rittmaster et al. and Archer, as applied to claims 1 and 11 above, and further in view of McCollom et al. (U.S. Patent Application Publication 2002/001623).

The combination of Dickinson et al. and Rittmaster et al. and Archer teaches a method and system as described above with respect to claims 1 and 11, respectively. In particular, the combination of Dickinson et al. and Rittmaster et al. and Archer teaches lottery game availability based on geographic location, wherein users can create a wager based on user inputs to play available lottery games (Figure 1 of Dickinson et al. along with the related description thereof). However, the combination of Dickinson et al. and Rittmaster et al. and Archer does not explicitly teach giving the user the ability to finalize the wager at a later time and reminding the user to finalize the wager, as recited in claims 10 and 20. It is notoriously well known to offer products and services over a network and to allow the purchaser of such products and services to finalize a purchase at a later time and/or be reminded to finalize the purchase. McCollom et al. teach an analogous networked

system in which users are able to purchase items and coupons over a network, wherein the users are able to finalize their purchase at a later time and be reminded to finalize their purchase (Figures 13, 14 and 17 along with the related description thereof, wherein purchases are placed in a "shopping basket" or "wish list" for later purchase). The system display provides an indication reminding the purchaser that the purchase is not finalized (Figures 21 and 22 along with the related description thereof). McCollom et al. teach that finalizing purchases and reminding users of the same improves the system by allowing users to browse, assemble and store selections until electing to make a purchase (paragraphs [0132] to [0137]). It would have been obvious for one skilled in the art at the time of the invention to incorporate the ability for users or purchases to finalize a purchase and be reminded of the same as taught by McCollom et al. into the lottery method and system as taught by the combination of Dickinson et al., Rittmaster and Archer in order to browse, assemble and store lottery selections until electing to make a purchase as desirably taught by McCollom et al. in paragraphs [0132] to [0137].

9. Claims 21-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (U.S. Patent No. 6,325,716) in view of Archer (U.S. Patent No. 6,277,026) and Small (U.S. Patent No. 4,815,741).

Walker teaches a method as recited in claims 21 and 27. The disclosed method comprises giving the user the ability to set conditions via user equipment on which an interactive wagering application is partially implemented and automatically participating in the lottery on the behalf of the user when the conditions have been met See col. 2:36-3:35. However, Walker employs paper tickets and does not explicitly teach electronic user equipment. Archer teaches an analogous system for selling lottery tickets online via electronic user equipment. See Figs. 1, 4A along with the related description thereof and col. 5:10-15. Archer teaches that the electronic user equipment facilitate the

sale and distribution of lottery tickets online, which enhances revenues (col. 1:36-67). Walker et al in view of Archer do not explicitly disclose notifying the user of the automatic participated in the lottery. However, Small teaches an analogous system for notifying the user of the automatic participation in the lottery (summary). It would have been obvious for one skilled in the art at the time of the invention to incorporate the electronic user equipment and notifying the user of the automatic participated in the lottery as taught by Archer and Small into the interactive wagering application of Walker et al. in order to facilitate the sale and distribution of lottery tickets which enhances revenues and an inform that a user has been successfully entered in the lottery as desirably taught by Archer in col. 1:36-67 and Small (summary).

Regarding claims 22 and 28, Walker teaches automatically participating in the lottery comprises using a default set of lottery numbers (col. 3:1-8, col. 5:1-19).

Regarding claims 23 and 29, Walker teaches default sets of lottery numbers are user-specified (col. 3:1-8, col. 5:1-19).

Regarding claims 24 and 30, Walker teaches automatically participating in the lottery comprises using a set of randomly generated lottery numbers (col. 3:1-8, col. 5:1-19).

Regarding claims 25 and 31, Walker teaches conditions based on factors selected from the group consisting of a period of time from the last time the user participated, the lottery prize, the odds of winning and any combination thereof (col. 2:54-3:1 and col. 4:11-27). In regard to the odds of winning, the Walker teaches enrolling a ticket based on a minimum payout, which determines the ticket's expected payout (i.e. odds of winning a particular payout).

Regarding claims 26 and 32, Walker teaches automatically participating in the lottery on behalf of the user every time the lottery is offered (col. 1:55-64 and col. 2:54-64).

(10) Response to Argument

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine can be found within the teaching of Archer. As noted in the rejection above, Schneier discloses all of the claimed limitations except for the limitation of issuing an electronic lottery ticket for the at least one of the lotteries, wherein a lottery drawing for the at least one of the lotteries will take play at a later time. Archer teaches a system and method for facilitating the purchase and sale of a lottery ticket only by receiving an online request from a purchaser to purchase a lottery ticket operated by a lottery authority or lottery commission. A User may purchase lottery tickets online for any given lottery type. The online request includes information of generating a secure lottery ticket purchase code and a purchase confirmation notice related to the lottery ticket to the purchaser. The confirmation notice includes the secure lottery ticket purchase code. The information, the lottery game value and the secure lottery ticket purchase code are stored in a data storage system to be

accessed by the lottery authority in operating the lottery. When a player's purchased ticket is verified as a winner, the user presents evidence of the purchase by providing a printout of a previously generated web-page containing a secure lottery ticket purchase code, which is considered at this point to be a request code and other personal profile information to verify the user and the lottery ticket at an authorized payment center. Once the information is verified a user receives the payout of the lottery purchased. It is inherently known in lottery that users may purchase lottery for different lottery drawings that may take place at a later time. Archer further teaches that when a user presents evidence of a winning lottery ticket number, the ticket number maybe from a previously generated web-site page containing a randomly generated and unique secure lottery ticket purchase code and some other personal information, which one can presume that the purchase of the lottery ticket was for a lottery that took place at a later time (col. 9, lines 56-65). By issuing lottery tickets for lottery drawings for a later time, one of ordinary skill in the art provide a system that facilitates the sale of lottery tickets without disturbing bearer-type tickets and the like. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was modify Schneier to include the purchasing of an electronic ticket for at least one lotteries, wherein the drawing for the at least one lotteries will take place at a later time as taught by Archer to provide known methods to yield to predictable results that allows a user to retrieve there results of a lottery ticket either online or an authorized payment center.

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine Dickinson can be found within Rittmaster and Archer. As noted above, Dickinson discloses all of the claimed limitation except for determining the particular location of the user and providing a listing of lotteries in which the user can participate on a visual display based on the particular location of the user and issuing an electronic lottery ticket for the at least one of the lotteries, wherein a lottery drawing for the at least one of the lotteries will take place at a later time and issuing an electronic lottery ticket for the at least one of the lotteries wherein a lottery drawing for the at least one of the lotteries will take place at a later time. Rittmaster teaches limiting lotteries to geographic locations where such lotteries are legal (paragraphs [0006] and [0039]). Rittmaster teaches determining particular location of the user (figure 2) and providing a listing of lotteries in which a user can participate on a visual display based on the particular information is used to allow or deny access to the product or service (i.e. the lottery listing of Dickinson). By modifying Dickinson's gaming terminals to include other various lottery games over the Internet and limiting lottery or game services available over the Internet based on geographic information determined from players would helps to ensure lottery legality in certain jurisdictions (paragraph [0006]). Therefore, it would have been obvious to one of ordinary skill in the art to modify lottery terminal of Dickinson to include determining the particular location of the user and providing a listing of lotteries in which the user can participate on a visual display based on the particular location of the user as taught by Rittmaster to provide a player to participate in different lotteries that are available based on geographic information determined from the player to ensure lottery legality in certain jurisdictions. As noted above, Archer teaches a system and method for facilitating the purchase and sale of a lottery ticket only by receiving an online request from a purchaser to purchase a lottery ticket operated by a lottery authority or lottery commission. It is inherently known in lottery that

users may purchase lottery for different lottery drawings that may take place at a later time. Archer further teaches that when a user presents evidence of a winning lottery ticket number, the ticket number maybe from a previously generated web-site page containing a randomly generated and unique secure lottery ticket purchase code and some other personal information, which one can presume that the purchase of the lottery ticket was for a lottery that took place at a later time (col. 9, lines 56-65). By issuing lottery tickets for lottery drawings for a later time, one of ordinary skill in the art provide known methods to yield to predictable results that a user to retrieve there results of a lottery ticket either online or an authorized payment center. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Dickinson et al to include limit lottery availability based on geographic information determined from players and issuing electronic tickets for lotteries taking place at a later time as taught by Rittmaster et al and Archer to ensure lottery legality in certain jurisdictions as desirably and provide known methods to yield to predictable results that allows a user to retrieve there results of a lottery ticket either online or an authorized payment center.

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The IDS filed 19 July 2006 is attached and considered by the examiner.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Alex P. Rada

Conferees:

Xuan Thai

Eugene Kim